



Reprinted
February 24, 2004

ENGROSSED HOUSE BILL No. 1080

DIGEST OF HB 1080 (Updated February 23, 2004 5:48 pm - DI 75)

Citations Affected: IC 4-13.6; IC 5-22; noncode.

Synopsis: Indiana business purchasing preferences. Provides a price preference to Indiana businesses for public works and procurement contracts awarded by the state. Provides that the preference ranges from 1% to 5%, depending on the estimated cost of the purchase. Provides that this preference does not apply to the detriment of a business from a state bordering Indiana, if the bordering state does not provide purchasing preferences to its businesses more favorable than preferences provided to Indiana businesses by Indiana law. Requires a business claiming the preference to provide certain information to substantiate that the business is an Indiana business. Requires the department of administration to submit a report to the legislative council relating to the operation of the preference not later than September 1, 2008. Provides for expiration of the preference on July 1, 2009. Provides that if a governmental body adopts a retaliatory purchasing preference, the preference may not apply to the detriment of the businesses of a bordering state if the bordering state does not provide purchasing preferences to its businesses more favorable than preferences provided to Indiana businesses by Indiana law. Provides that to be considered responsible, an offeror for a purchase by the state that is required to register with the secretary of state must have registered at least 45 days before the solicitation for the purchase is issued.

Effective: July 1, 2004.

Mays, Espich, Kuzman, Dvorak

(SENATE SPONSORS — WEATHERWAX, BREAU, SKILLMAN)

January 13, 2004, read first time and referred to Committee on Appointments and Claims.
January 29, 2004, reported — Do Pass.
February 2, 2004, read second time, ordered engrossed.
February 3, 2004, engrossed.
February 5, 2004, read third time, passed. Yeas 96, nays 0.

SENATE ACTION

February 10, 2004, read first time and referred to Committee on Economic Development and Technology.
February 16, 2004, reported favorably — Do Pass.
February 23, 2004, read second time, amended, ordered engrossed.

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Reprinted
February 24, 2004

Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

ENGROSSED HOUSE BILL No. 1080

A BILL FOR AN ACT to amend the Indiana Code concerning state and local administration.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 4-13.6-6-2 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2. Except as provided
3 **in section 2.7 of this chapter or** in rules adopted under section 2.5 of
4 this chapter, the division shall award a contract to the lowest
5 responsible and responsive contractor.
- 6 SECTION 2. IC 4-13.6-6-2.7 IS ADDED TO THE INDIANA
7 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
8 [EFFECTIVE JULY 1, 2004]: **Sec. 2.7. (a) As used in this section,**
9 **"Indiana business" refers to any of the following:**
- 10 (1) **A business whose principal place of business is located in**
11 **Indiana.**
- 12 (2) **A business that pays a majority of its payroll (in dollar**
13 **volume) to residents of Indiana.**
- 14 (3) **A business that employs Indiana residents as a majority of**
15 **its employees.**
- 16 (4) **A business that makes significant capital investments in**
17 **Indiana.**

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(5) A business that has a substantial positive economic impact on Indiana.

(b) The department shall consult with the department of commerce in developing criteria for determining whether a business is an Indiana business under subsection (a). The department may consult with the department of commerce to determine whether a particular business meets the requirements of this section and the criteria developed under this subsection.

(c) There are the following price preferences for a contractor that is an Indiana business:

(1) Five percent (5%) for a contract expected by the division to be less than five hundred thousand dollars (\$500,000).

(2) Three percent (3%) for a contract expected by the division to be at least five hundred thousand dollars (\$500,000) but less than one million dollars (\$1,000,000).

(3) One percent (1%) for a contract expected by the division to be at least one million dollars (\$1,000,000).

(d) The division shall compute a preference under this section in the same manner that a preference is computed under IC 5-22-15.

(e) Notwithstanding subsection (c), the division shall award a contract to the lowest responsive and responsible contractor, regardless of the preference provided in this section, if:

(1) the contractor is an Indiana contractor; or

(2) the contractor is a contractor from a state bordering Indiana and the contractor's home state does not provide a preference to the home state's contractors more favorable than is provided by Indiana law to Indiana contractors.

(f) A contractor that wants to claim a preference provided under this section must do all of the following:

(1) State in the contractor's bid that the contractor claims the preference provided by this section.

(2) Provide the following information to the department:

(A) The location of the contractor's principal place of business. If the contractor claims the preference as an Indiana business described in subsection (a)(1), a statement explaining the reasons the contractor considers the location named as the contractor's principal place of business.

(B) The amount of the contractor's total payroll and the amount of the contractor's payroll paid to Indiana residents.

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(C) The number of the contractor's employees and the number of the contractor's employees who are Indiana residents.

(D) If the contractor claims the preference as an Indiana business described in subsection (a)(4), a description of the capital investments made in Indiana and a statement of the amount of those capital investments.

(E) If the contractor claims the preference as an Indiana business described in subsection (a)(5), a description of the substantial positive economic impact the contractor has on Indiana.

(g) This section expires July 1, 2009.

SECTION 3. IC 5-22-15-20 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 20. (a) This section does not apply to the state lottery commission created by IC 4-30-3-1.

(b) As used in this section, "out-of-state business" refers to a business that is not an Indiana business.

(c) A governmental body may adopt rules to give a preference to an Indiana business that submits an offer for a purchase under this article if all of the following apply:

(1) An out-of-state business submits an offer for the purchase.

(2) The out-of-state business is a business from a state that gives purchase preferences unfavorable to Indiana businesses.

(d) Rules adopted under subsection (c) must establish criteria for determining the following:

(1) Whether an offeror qualifies as an Indiana business under the rules.

(2) When another state's preference is unfavorable to Indiana businesses.

(3) The method by which the preference for Indiana businesses is to be computed.

(e) Rules adopted under subsection (c) may not give a preference to an Indiana business that is more favorable to the Indiana business than the other state's preference is to the other state's businesses.

(f) Rules adopted under subsection (c) must provide that a contract shall be awarded to the lowest responsive and responsible offeror, regardless of the preference provided under this section, if:

(1) the offeror is an Indiana business; or

(2) the offeror is a business from a state bordering Indiana and the offeror's home state does not provide a preference to the home state's businesses more favorable than is provided

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by Indiana law to Indiana businesses.

SECTION 4. IC 5-22-15-20.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 20.5. (a) This section applies only to a contract awarded by a state agency.**

(b) As used in this section, "Indiana business" refers to any of the following:

(1) A business whose principal place of business is located in Indiana.

(2) A business that pays a majority of its payroll (in dollar volume) to residents of Indiana.

(3) A business that employs Indiana residents as a majority of its employees.

(4) A business that makes significant capital investments in Indiana.

(5) A business that has a substantial positive economic impact on Indiana as defined by criteria developed under subsection (c).

(c) The Indiana department of administration shall consult with the department of commerce in developing criteria for determining whether a business is an Indiana business under subsection (a). The Indiana department of administration may consult with the department of commerce to determine whether a particular business meets the requirements of this section and the criteria developed under this subsection.

(d) There are the following price preferences for supplies purchased from an Indiana business:

(1) Five percent (5%) for a purchase expected by the state agency to be less than five hundred thousand dollars (\$500,000).

(2) Three percent (3%) for a purchase expected by the state agency to be at least five hundred thousand dollars (\$500,000) but less than one million dollars (\$1,000,000).

(3) One percent (1%) for a purchase expected by the state agency to be at least one million dollars (\$1,000,000).

(e) Notwithstanding subsection (d), a state agency shall award a contract to the lowest responsive and responsible offeror, regardless of the preference provided in this section, if:

(1) the offeror is an Indiana business; or

(2) the offeror is a business from a state bordering Indiana and the business's home state does not provide a preference to the home state's businesses more favorable than is provided

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by Indiana law to Indiana businesses.

(f) A business that wants to claim a preference provided under this section must do all of the following:

(1) State in the business's bid that the business claims the preference provided by this section.

(2) Provide the following information to the department:

(A) The location of the business's principal place of business. If the business claims the preference as an Indiana business described in subsection (b)(1), a statement explaining the reasons the business considers the location named as the business's principal place of business.

(B) The amount of the business's total payroll and the amount of the business's payroll paid to Indiana residents.

(C) The number of the business's employees and the number of the business's employees who are Indiana residents.

(D) If the business claims the preference as an Indiana business described in subsection (b)(4), a description of the capital investments made in Indiana and a statement of the amount of those capital investments.

(E) If the business claims the preference as an Indiana business described in subsection (b)(5), a description of the substantial positive economic impact the business has on Indiana.

(g) This section expires July 1, 2009.

SECTION 5. IC 5-22-16-4, AS AMENDED BY P.L.254-2003, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 4. (a) An offeror that is a foreign corporation must be registered with the secretary of state to do business in Indiana in order to be considered responsible.

(b) This subsection applies to a purchase of supplies or services for a state agency under a contract entered into or purchase order sent to an offeror (in the absence of a contract) after June 30, 2003, including a purchase described in IC 5-22-8-2 or IC 5-22-8-3. A state agency may not purchase property or services from a person that is delinquent in the payment of amounts due from the person under IC 6-2.5 (gross retail and use tax) unless the person provides a statement from the department of state revenue that the person's delinquent tax liability:

(1) has been satisfied; or

(2) has been released under IC 6-8.1-8-2.

(c) Except as provided in subsection (d), the purchasing agent may

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award a contract to an offeror pending the offeror's registration with the secretary of state. If, in the judgment of the purchasing agent, the offeror has not registered within a reasonable period, the purchasing agent shall cancel the contract. An offeror has no cause of action based on the cancellation of a contract under this subsection.

(d) This subsection applies only to a contract awarded by a state agency. In order to be considered responsible, an offeror that is a business required to register with the secretary of state must have registered with the secretary of state at least forty-five (45) days before the solicitation for the purchase was issued.

SECTION 6. [EFFECTIVE JULY 1, 2004] (a) As used in this SECTION, "department" refers to the Indiana department of administration established by IC 4-13-1-2.

(b) As used in this SECTION, "preference" refers to an Indiana business preference claimed by a contractor or a business under a preference statute.

(c) As used in this SECTION, "preference statute" refers to either of the following:

(1) IC 4-13.6-6-2.7, as added by this act.

(2) IC 5-22-15-20.5, as added by this act.

(d) The department shall compile and organize a report relating to every contractor or business that claims a preference. The report must include the following information:

(1) A summary of the information that contractors and businesses that claim a preference are required to report under the preference statute.

(2) A summary of the number of contracts awarded to Indiana contractors or businesses under a preference statute. The summary must be broken down by each of the criteria in the preference statute for determining whether a business is an Indiana business.

(3) A statement of issues or questions raised, if any, in the implementation of the preference statutes.

(4) A statement of recommendations, if any, that the department has for changes to the preference statutes.

(5) Any other information the department considers useful in the evaluation of the preference statutes.

(e) The report described by subsection (c) must:

(1) provide the statistical information broken down by fiscal year with the fiscal year ending:

(A) June 30, 2005, being the first year of the report; and

(B) June 30, 2008, being the last year of the report; and

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- 1 (2) be submitted to the legislative council not later than
- 2 September 1, 2008, in an electronic format under IC 5-14-6.
- 3 (f) This SECTION expires July 1, 2009.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Appointments and Claims, to which was referred House Bill 1080, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

HARRIS, Chair

Committee Vote: yeas 12, nays 0.

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COMMITTEE REPORT

Madam President: The Senate Committee on Economic Development and Technology, to which was referred House Bill No. 1080, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to House Bill 1080 as printed January 30, 2004.)

FORD, Chairperson

Committee Vote: Yeas 9, Nays 0.

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SENATE MOTION

Madam President: I move that Senator Skillman be added as cosponsor of Engrossed House Bill 1080.

WEATHERWAX

SENATE MOTION

Madam President: I move that Engrossed House Bill 1080 be amended to read as follows:

Page 2, delete lines 18 through 20.

Page 2, line 21, delete "(e)" and insert "(d)".

Page 2, line 23, delete "(f)" and insert "(e)".

Page 2, between lines 30 and 31, begin a new paragraph and insert:

"(f) A contractor that wants to claim a preference provided under this section must do all of the following:

(1) State in the contractor's bid that the contractor claims the preference provided by this section.

(2) Provide the following information to the department:

(A) The location of the contractor's principal place of business. If the contractor claims the preference as an Indiana business described in subsection (a)(1), a statement explaining the reasons the contractor considers the location named as the contractor's principal place of business.

(B) The amount of the contractor's total payroll and the amount of the contractor's payroll paid to Indiana residents.

(C) The number of the contractor's employees and the number of the contractor's employees who are Indiana residents.

(D) If the contractor claims the preference as an Indiana business described in subsection (a)(4), a description of the capital investments made in Indiana and a statement of the amount of those capital investments.

(E) If the contractor claims the preference as an Indiana business described in subsection (a)(5), a description of the substantial positive economic impact the contractor has on Indiana.

(g) This section expires July 1, 2009."

Page 4, between lines 19 and 20, begin a new paragraph and insert:

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"(f) A business that wants to claim a preference provided under this section must do all of the following:

(1) State in the business's bid that the business claims the preference provided by this section.

(2) Provide the following information to the department:

(A) The location of the business's principal place of business. If the business claims the preference as an Indiana business described in subsection (b)(1), a statement explaining the reasons the business considers the location named as the business's principal place of business.

(B) The amount of the business's total payroll and the amount of the business's payroll paid to Indiana residents.

(C) The number of the business's employees and the number of the business's employees who are Indiana residents.

(D) If the business claims the preference as an Indiana business described in subsection (b)(4), a description of the capital investments made in Indiana and a statement of the amount of those capital investments.

(E) If the business claims the preference as an Indiana business described in subsection (b)(5), a description of the substantial positive economic impact the business has on Indiana.

(g) This section expires July 1, 2009."

Page 5, after line 3, begin a new paragraph and insert:

"SECTION 6. [EFFECTIVE JULY 1, 2004] (a) As used in this SECTION, "department" refers to the Indiana department of administration established by IC 4-13-1-2.

(b) As used in this SECTION, "preference" refers to an Indiana business preference claimed by a contractor or a business under a preference statute.

(c) As used in this SECTION, "preference statute" refers to either of the following:

(1) IC 4-13.6-6-2.7, as added by this act.

(2) IC 5-22-15-20.5, as added by this act.

(d) The department shall compile and organize a report relating to every contractor or business that claims a preference. The report must include the following information:

(1) A summary of the information that contractors and businesses that claim a preference are required to report under the preference statute.

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- (2) A summary of the number of contracts awarded to Indiana contractors or businesses under a preference statute. The summary must be broken down by each of the criteria in the preference statute for determining whether a business is an Indiana business.
 - (3) A statement of issues or questions raised, if any, in the implementation of the preference statutes.
 - (4) A statement of recommendations, if any, that the department has for changes to the preference statutes.
 - (5) Any other information the department considers useful in the evaluation of the preference statutes.
 - (e) The report described by subsection (c) must:
 - (1) provide the statistical information broken down by fiscal year with the fiscal year ending:
 - (A) June 30, 2005, being the first year of the report; and
 - (B) June 30, 2008, being the last year of the report; and
 - (2) be submitted to the legislative council not later than September 1, 2008, in an electronic format under IC 5-14-6.
 - (f) This SECTION expires July 1, 2009.
- Renumber all SECTIONS consecutively.

(Reference is to EHB 1080 as printed February 17, 2004.)

WEATHERWAX

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